

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3570 OF 2005

Rachna O.D'silva .. Petitioner

Vs.

Oswald Fredrick D'silva @ Amar ..Respondents

Mr.S.M.Gorwadkar for the petitioner

Mr.Sayeed Akhar for the respondents

CORAM : S.U.KAMDAR, J
DATED : 2ND DECEMBER, 2005

P.C.:

1. The present petition challenges the order passed by the Family Court dt.19.8.04 rejecting the application for grant of maintenance amount. The two grounds on which the application for maintenance has been rejected are firstly that petitioner has filed the petition for restitution of conjugal rights and thus, there is no need to grant maintenance. It has been held by the trial court that the petitioner is not entitled to maintenance because the photographs are found of the petitioner with the other man. This indicates that the the petitioner is having a social life

with other men. It has been also held by the trial court that the parties have been living in their matrimonial home and it is the petitioner therein who has left the matrimonial home and thus, no money should be granted towards maintenance. In the course of the said findings, trial court has also held that she has produced her hand written statements showing that she is earning larger amount for extra work put in by her apart from the monthly salary. I am of the opinion that the approach of the Trial Court in rejecting the application for maintenance is totally perverse and the same is liable to be quashed and set aside.

2. The fact remains that there are disputes between the petitioner and respondent. The petitioner has in the said circumstances left the house and not residing with the respondent. In my opinion, merely filing of petition for restitution of conjugal rights by the husband does not disentitle the petitioner from applying for maintenance. In so far as income is concerned, there is no dispute that the respondent has substantial income. In para 3 of the affidavit

which has been filed by the petitioner it has been pointed out that the income of the petitioner is 1.0 lac per month as salary and also having three credit cards and also running a saloon in the name of Fringe Saloon and Beauty Centre. In so far as aforesaid averments are concerned, there is no serious denial. In so far as saloon is concerned it has been admitted that he is running the business of saloon. In so far as car and credit cards are concerned it has also been accepted. However as regards salary, it has been contended that the respondent has been laid off by the company and thus there is no payment of salary to him. However, the respondent contends that huge amount is spent towards mobile bill on the company's account thus, admitting that he is in present employment and not laid off as claimed. The respondent is not disclosing the correct income and giving vague answers to the court.

3. Keeping in mind the aforesaid averments on record, I am of the opinion that respondent should be directed to give maintenance to the petitioner fixed @ Rs.10000 per month. In that light of the

matter, the impugned order dt.19.8.04 rejecting the application for grant of maintenance is hereby quashed and set aside and the application of petitioner is allowed and the respondent is directed to pay the maintenance per month @ 10000 w.e.f.1.12.05. The learned counsel for the respondent has produced the consent terms which has been arrived at before the Matrimonial Court i.e. the Family Court, the original of which is lying in the record of Matrimonial Court .The learned counsel for the petitioner confirms the terms and conditions of the said Consent terms and the same has been signed by the petitioner herein. Both the advocates have also signed the said consent terms. In view thereof there shall be an order in terms of consent terms. The marriage between the parties will stand dissolved in terms of the said consent terms. In so far as issue pertaining to matrimonial house and alimony and / or final maintenance is concerned, the same will be considered by the Family Court. The Family Court to determine the same on or before 31.3.06. Certified copy expedited.

4. Parties to act on an ordinary copy of this order duly authenticated by the Personal Assistant of this court.